

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Health	(2) MEETING DATE 5/13/2014	(3) CONTACT/PHONE Penny Borenstein / 781-5519	
(4) SUBJECT Hearing to consider an ordinance amending Chapter 8.23 of the County Code regarding the licensure of tobacco retailers in county unincorporated areas. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board waive the reading of the ordinance and approve the ordinance amending Chapter 8.23 of the County Code regarding the licensure of tobacco retailers in county unincorporated areas.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent    { } Presentation <b>{ X }</b> Hearing (Time Est. <u>35 min.</u> )    { } Board Business (Time Est. <u>    </u> )			
(11) EXECUTED DOCUMENTS { } Resolutions    { } Contracts <b>{ X }</b> Ordinances    { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required <b>{ X }</b> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A    Date: <u>May 6, 2014</u>	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) All Districts			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Penny Borenstein, MD, MPH, Health Officer  
Ian Parkinson, Sheriff

DATE: May 13, 2014

SUBJECT: Hearing to consider an ordinance amending Chapter 8.23 of the County Code regarding the licensure of tobacco retailers in county unincorporated areas. All Districts.

## **RECOMMENDATION**

It is recommended that the Board waive the reading of the ordinance and approve the ordinance amending Chapter 8.23 of the County Code regarding the licensure of tobacco retailers in county unincorporated areas.

## **DISCUSSION**

In August 2008, the Board of Supervisors amended Chapter 8.23 of the County Code which requires the licensure of tobacco retailers in the county. Tobacco retailer licensing (TRL) provides communities with a mechanism to hold the owner of a business accountable for the illegal sale of tobacco products to minors. Unlike the sale of alcohol, under existing state law only the clerk, not the business owner, is fined when tobacco is sold to minors.

With 34,000 youth starting to smoke in California each year, TRL is an opportunity for communities to help protect their youth from serious health risks. Data indicates that more than 80% of lifelong smokers begin smoking tobacco before their 18<sup>th</sup> birthday. According to the Surgeon General of the United States, one-third of all teens who begin smoking will die prematurely of tobacco-related disease.

The current ordinance was enacted in 2008, with compliance enforcement responsibility assigned to the Sheriff's Office and the Tobacco Control Program of Public Health. Enforcement has been very consistent for the past 18 months but issues have arisen after compliance checks are complete. The District Attorney's Office has been reluctant to prosecute business owners under provisions of the penal code or Chapter 8.23, largely due to the inability to prove intent. The primary reason for this ordinance revision is to relieve the District Attorney's Office of Chapter 8.23 ordinance violation prosecutions in court, and to create an administrative hearing procedure in its place that will progressively emphasize compliance over penalty.

Quarterly compliance checks are conducted at each retail location that sells tobacco in the unincorporated areas of the county. The goal of compliance checks is to reduce illegal access to tobacco products by minors by actively enforcing all tobacco laws. Compliance checks follow a strict protocol, and include the following components:

- Youth volunteers (decoys), aged 15-17, are recruited to participate and trained in specific protocol.
- Youth must have a valid driver's license or California ID card, issued by the California Department of Motor Vehicles.
- Youth volunteers enter stores and attempt to buy tobacco products.
- Youth are taught to never lie and must show their actual ID if the clerk asks for it.
- If the clerk agrees to sell them tobacco products, they pay for the purchase and leave. If the clerk refuses, they leave without argument.
- Decoys are supervised by Tobacco Control and law enforcement personnel at all times.
- The tobacco sales activity must occur within the presence of law enforcement personnel.

The current penalty for ordinance violations includes payment of a civil fine of not less than two hundred dollars and not

exceeding one thousand dollars per violation, as well as:

- (1) Upon a finding of a first violation within any five-year period, the license shall be suspended for thirty days.
- (2) Upon a finding of a second license violation within any five-year period, the license shall be suspended for ninety-days.
- (3) Upon a finding of a third license violation within any five-year period, the license shall be revoked and no new license shall be issued for one year from the date of revocation.
- (4) Upon a finding of a fourth license violation within any five-year period, the license shall be revoked and no new license shall be issued for five years from the date of revocation.

Current penalties do not allow opportunities for businesses to participate in prevention programs designed to educate business owners/employees on methods and technology to prevent future violations. In addition, while existing civil fines seem reasonable, suspending the ability of a business to sell tobacco for a period not less than thirty days has potential for significant financial impacts, depending on sales volume. As a case in point, a prominent retail chain in the City of San Luis Obispo negotiated a \$14,000 fine with the City Attorney rather than lose their ability to sell tobacco for thirty days.

Since the intent of this ordinance is to protect youth from harmful tobacco products and not to punish business owners, the ordinance revision proposes a flat one thousand dollar fine for each violation but also creates a diversion program that would be educational in nature. In addition, after two violations within a five year period, the business owner could reduce their license suspension by purchasing electronic point of sale equipment approved by the Tobacco Control Program. This equipment is part of an electronic cash register system and reads an individual's driver license as an enhanced method to verify an individual's eligibility (age) to purchase tobacco products. County Tobacco Control enforcement officials believe that all business owners engaging in the sale of products requiring age verification (tobacco or alcohol) should eventually install point-of-sale equipment. Standard installation of upgraded point-of-sale equipment is expected to significantly reduce future sales of tobacco products to minors.

The following penalties are proposed in the ordinance revision of Section 8.23.200(a) of the County Code:

(1) Upon a finding by the Health Officer of a first license violation within any five-year period, the license shall be suspended for thirty days, and the tobacco retailer shall also pay an administrative fine. The Health Officer may rescind the license suspension if the tobacco retailer successfully completes the Tobacco Retailer First Offender Diversion Program, consisting of an onsite employee education program administered by the Public Health Department's Tobacco Control Program. Completion of the Diversion Program does not expunge the violation, which will be counted for the purposes of any future finding that a second or subsequent violation has occurred.

(2) Upon a finding by the Health Officer of a second license violation within any five-year period, the license shall be suspended for sixty days, and the tobacco retailer shall also pay an administrative fine for the second violation. The Health Officer may reduce the license suspension to fifteen days if the tobacco retailer successfully completes the Tobacco Retailer Second Offender Diversion Program consisting of an onsite employee education program administered by the Health Agency's Tobacco Control Program and installs Health Agency approved electronic point-of-sale equipment designed to prevent sales of tobacco products to minors. The Second Offender Diversion Program completion in lieu of suspension does not expunge the violation, which will be counted for the purposes of a future finding that a third or subsequent violation has occurred.

(3) Upon a finding by the Health Officer of a third license violation within any five-year period, the license shall be suspended for ninety days, and the tobacco retailer shall also pay an administrative fine for the third violation.

(4) Upon a finding by the Health Officer of a fourth license violation within any five-year period, the license shall be revoked and no new license shall be issued for one year from the date of revocation, and the tobacco retailer shall also pay an administrative fine for the fourth violation.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel drafted the ordinance revisions, with input from the Sheriff's Office and the Public Health Department. County Counsel has reviewed and approved the ordinance as to form and legal effect.

#### **FINANCIAL CONSIDERATIONS**

It is estimated that the administrative fines could result in \$12,000 to \$15,000 of revenue each fiscal year. Revenue will be used to support the diversion program efforts.

## **RESULTS**

There are approximately 55 tobacco retailers in the unincorporated areas of the county. Results of compliance checks since June 2012 includes:

Date	# of Stores Visited	# of Stores Sold	Sales Rate
June - July 2012	52	11	21.0%
September - November 2012	52	6	11.5%
December - February 2013	51	3	6.0%
March - May 2013	58	3	5.0%
July - August 2013	54	6	11.0%

It is anticipated that revising the ordinance and creating an administrative hearing process for businesses will significantly decrease illegal sales rates to youth over time. Creation of First Offender and Second Offender Tobacco Retailer Diversion Programs will provide business incentives for utilization of prevention measures aimed at curbing future tobacco sales violations. The ultimate goal of tobacco retailer compliance checks is a result where no stores sell tobacco products to minors. These ongoing efforts will further the County's vision of a Healthy and Safe Community.

## **ATTACHMENTS**

1. Redlined version of proposed ordinance amending Chapter 8.23.
2. Ordinance amending Chapter 8.23.